



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: June 24, 2008
TO: Mayor and Councilmembers
FROM: Administration Division, Finance Department
SUBJECT: Telecommunications Utility Users Tax Ballot Measure

RECOMMENDATION:

That Council provide staff with final direction on the proposed telecommunications utility users tax ballot measure including the draft utility tax ordinance, the proposed tax rate and the proposed ballot language.

EXECUTIVE SUMMARY:

Since early February, 2008, the City has been considering placing a measure on the November, 2008 asking the voters to reauthorize the City's 6% telecommunications utility users tax. The City Council held a public work session on February 21, 2008 to consider this subject. Since that time, the matter has been reviewed by both the Finance Committee and the Ordinance Committee. We are now at the point in time where decisions must be made whether to proceed with the ballot measure and, if so, on the form of the ordinance and ballot language to be submitted to the voters as well as the tax rate. Staff is recommending that City Council make decisions and provide staff with final direction on each of these issues. If Council decides to proceed with the ballot measure, Staff will return on July 1st for formal Council approval of the finalized elections resolutions and the draft ordinance to be submitted to the voters. This would constitute a "special election" for the City, however, the City's ballot measure can be consolidated with the general and federal to be conducted the Santa Barbara County Elections Office.

BACKGROUND:

Since 1970 the City has received revenue from a utility users tax (UUT). Half of the UUT revenue is used to fund critical General Fund services including police and fire services, parks maintenance and recreation activities. In accordance with a City Council ordinance adopted in 1977, the other fifty percent is used to fund the reconstruction, maintenance and repair of city streets. Public safety, parks and recreation activities and the safety and the quality of our streets are all dependent on the UUT.

The City's UUT is a general 6% tax levied on utility services including water, electric, natural gas, refuse, cable television and telephone. The UUT is one of the City's largest revenue sources, providing over \$13 million annually. As stated above, the revenue is split evenly between the City's General Fund and the Streets Fund providing significant resources (over \$6.5 million) to each. The following table summarizes the City's total UUT revenue for Fiscal Year 2007.

Utility Service	Amount
Electric	\$ 4,198,045
Telecommunications	3,879,244
Water	1,497,254
Natural Gas	1,336,518
Cable TV	1,255,510
Trash	966,310
Total	\$ 13,132,881

The following table shows how the City's current telecommunications UUT, estimated to be almost \$4.2 million in fiscal year 2009 is allocated in the Fiscal Year 2009 budget to be adopted on June 24th.

	Amount	Percent
Streets Fund	\$ 2,200,000	50%
General Fund		
Administration	329,804	7%
Community Development	234,188	5%
Library	92,330	2%
Parks & Recreation	312,233	7%
Public Safety	1,088,243	25%
Public Works	143,202	3%
Total General Fund	\$ 2,200,000	50%
Total Telecommunications UUT	\$ 4,400,000	100%

Unfortunately, due to rapidly changing telecommunications technology and recent developments in the legal and regulatory environments, the City's UUT revenue derived from telecommunications services (telephone) is now possibly at risk. As the table above indicates, the telecommunications UUT is the City's second largest source of UUT, providing almost \$3.9 million in Fiscal Year 2007.

Santa Barbara is similar to more than 100 California cities which fund local programs and services with a UUT. Typically, a UUT is levied on each user of a utility (e.g. telephone, electricity, gas, water, or video services) within an agency's boundaries. Most UUT ordinances in California date from a model ordinance developed by the League of California Cities in the 1970s after negotiations with the major utilities

intended to standardize collection and to ease the administrative burden for utility companies. Since that time however, communication technology has changed dramatically with the demise of telegrams and the rise of cell phones, internet communications, satellite communication, and other communication media, as well as the advent of fixed-fee calling plans and other marketing trends that simplify billing and reduce costs. Meanwhile, UUT ordinances have not kept pace with rapidly evolving technology because modernization of tax ordinances has been made more difficult by the voter-approval requirements of Propositions 13 (1978) and 218 (1996). This growing gap between 1970s ordinances and a rapidly changing marketplace has fueled a number of legal and practical challenges to utility users taxes on telephony. Consequently, over the last two years more than twenty California cities with a telecommunications UUT have sought and received voter approval of a modern telecommunications UUT. The list of these cities is included as Attachment 3. Voter approval is now required by Proposition 218 [Ant. XIII(C) and (D) of the state constitution as approved by the voters in 1996.

The Federal Excise Tax Issue: Most UUT ordinances, including the City's, are based on the old League of California Cities model ordinance and exclude from the tax base payments for services "exempt from" or "not subject to" the Federal Excise Tax (FET). For many years, the Internal Revenue Service (IRS) imposed the FET on most telephone charges, including charges based on *either* time *or* distance. This cross-reference to the FET exemption in local ordinances allowed the phone companies to standardize their billing methodology across their various service areas (which, of course, covered many cities and counties) and, thus, to only have to deal with one set of rules and exemptions in their billing practices despite providing phone service to many cities and counties. However, in May 2006, following a number of federal court decisions adverse to the IRS, the IRS announced it would no longer collect the FET on telephone call charges not based on time *and* distance. Because most of the California UUT ordinances, including Santa Barbara's, cite the FET, some carriers now argue that the IRS' policy change applies to California local agencies UUT. If true, this would virtually eliminate UUT revenue on telephony, since charges for almost all telephone plans today, especially for cellular plans, are based on time only, regardless of the distance between the two phones served by a call.

A number of California cities have amended their UUT ordinances to clarify that they did not wish to adopt the IRS' new practice, but rather intended to continue to impose their UUT as it had historically been imposed (*i.e.* on charges based on time *or* distance). Lawsuits challenging the right of local taxing authorities to clarify their ordinances without voter approval, or to continue to collect this revenue without an amendment, are now pending at the Superior Court level against the County and City of Los Angeles, the City of Sacramento and the City of Long Beach. Consequently, a number of cities have opted to seek voter approval of modernized and clarified ordinances in order to prevent this sort of challenge.

Technological Change: It is also likely that older technologies (e.g., landlines) will continue to be replaced by newer technologies. Indeed, some predict that web-based communications, like voice-over-the-internet protocol (VoIP) telephony as offered, for example, by Vonage, will take over a significant portion of the market in the next decade, perhaps even overtaking cellular telephony. Therefore, as technology continues to evolve, local agencies can expect continuing challenges to UUT ordinances dating from the League's 1970s now outdated model ordinance. Such challenges could have adverse consequences because failure to tax newer technologies would result in a substantial reduction in revenue for local services and create an inequitable situation where those who can afford to adopt newer technologies are not taxed while only those who cannot continue to be taxed. Similarly, the convergence of voice, data, video, and other services also poses challenges for the application of older UUT to new service plans offered by so-called "triple play" providers. These technological issues can be addressed by voter approval of an updated UUT ordinance as well.

Santa Barbara's current UUT ordinance also taxes only "cable TV" service, with this portion of the UUT collected for the City by our local cable franchisee from its customer base. This provision, however, has become somewhat outdated as state law was changed in 2007 so that cable companies and IP-TV companies (AT&T and Verizon) can now receive state-issued franchises and need not obtain a local franchise. In this regard, it is also important to note that, under federal law, direct broadcast satellite video services (DirectTV and Dish Network) are exempt from local utility taxes. As a result, it is apparent that the City should update its UUT provisions for cable TV and convert it into a video UUT tax so that the tax applies to the broader and newer technological concept of "video services" and without regard to the existence of a local franchise. Again, such a change would be merely a technological clarification and, more importantly, would create a level playing field for all "video" customers and providers.

Unless Santa Barbara addresses these concerns, the City is at risk of losing virtually all of its telephone UUT revenue – revenue currently dedicated to essential services such as police, fire, park maintenance, recreation programs and street maintenance.

DISCUSSION:

On February 21, 2008, the City Council held a work session on the potential risks to the City's telecommunications utility users tax (UUT). At the work session staff:

- Provided background information – what is the utility users tax?
- Explained the potential exposure - why is the city at risk of losing virtually all of its \$3.8 million in telecommunications Utility Users Tax?
- Described services at risk – what services might be affected by the loss of this revenue?
- Presented options – what can the City do?
- Discussed next steps and timelines for policy decisions and seek general direction on how to proceed.

- Proposed that following the Council work session staff would work with the Ordinance and Finance Committees to craft recommendations.

The Council expressed an interest in placing a revised UUT ordinance as a ballot measure before the voters in November, 2008 to update the City's telecommunications UUT ordinance. Doing so would protect against potential legal and regulatory risks to this critical revenue source as well as updating the ordinance's 1970's language to reflect rapidly changing telecommunications technology. The City's telecommunications UUT tax, in place since the 1970's, provides approximately \$4 million of critical revenue with 50% supporting the City's streets programs and the other 50% supporting essential General Fund services such as police, fire, parks and recreation and the library.

As a result of the work session, the Council directed the Ordinance Committee to review a modern draft telecommunications UUT "model ordinance." The Council also directed the Finance Committee to review the financial impacts of both the potential loss of this critical revenue source as well as of modernizing the ordinance language to ensure the tax is technology-neutral, is positioned to keep pace with rapidly changing technology and recognizes the market's shift to fixed-fee calling plans and other marketing trends that simplify billing and reduce costs.

Ordinance Committee: The Ordinance Committee met three times to consider the draft model ordinance language. The draft model ordinance is essentially the same ordinance that has been approved in the last two years by the voters of more than 20 other California UUT cities.

The Ordinance Committee conducted a detailed review of the ordinance language and requested one substantive modification; that the draft ordinance be amended to make it expressly clear that the City does not propose to levy the UUT on telecommunication services that are dedicated to, or used exclusively for, internet access. Although federal law already currently precludes the City from taxing Internet access, the Committee wanted to specifically and clearly exclude Internet access from the tax even if, in the future, federal law changes to allow such a tax.

In addition, at the request of the City's cable TV franchisee, Cox Communications, the Ordinance Committee asked Staff to meet with Cox to discuss how the model ordinance might impact Cox with respect to the services Cox currently provides or to those services which Cox may provide in the future. As requested by the Committee, staff met with Cox Communications representatives to discuss some of the concerns expressed by Cox, particularly with regard to the definitions section. Local Cox representatives as well as representatives from Cox' corporate offices in Atlanta participated in a conference call with City staff and the City's consulting attorney on UUT issues, Don Maynor. Although it is probably fair to say that Cox would have preferred different language in some portions of the ordinance's definitions section, in the end staff believes Cox understood that, as a tax ordinance and not a regulatory ordinance, these definitions were fairly standard and ones that have been agreed upon and adopted within the State of California and, indeed, across the country as part of the Streamlined Sales and Use Tax Agreement being negotiated on a national level.

At its final meeting on the matter, the Ordinance Committee voted unanimously to recommend the draft ordinance that is attached to this agenda report (dated as of June 24, 2008). As proposed and if approved by the voters, the ordinance would repeal the old provisions of the City's 1977 UUT Ordinance (SBMC Chapter 4.24) related to "telephone" and "cable TV" services and replace them with a new "Telecommunications" Chapter (SBMC 4.26) structured as a general tax.. As a general tax, under Prop 218, majority approval by the City electorate is required.

Finance Committee: As requested by Council, the Finance Committee to reviewed the financial impacts of the potential loss of this critical revenue source and modernizing the ordinance language to ensure that the tax is applied equally to all technologies, continues to keep pace with rapidly changing technology and recognizes the market's shift to fixed-fee calling plans and other marketing trends that simplify billing and reduce costs.

At the Council's February 21st work session, Don Maynor, the City's consulting attorney on the utility users tax, stated that although there is still no empirical evidence to be able to draw a conclusion with certainty, the adoption of a modern telecommunications UUT ordinance could result in a revenue increase of up to 10%. This is because the modern ordinance covers certain technologies and transactions that are not covered by the City's current 1970's ordinance. For example, a modern ordinance will cover VoIP (Voice over Internet Protocol) telephone services such as Vonage, which is not covered by our current ordinance. Also, the City's current telecommunications UUT ordinance taxes intrastate calls but not interstate or international calls. The modern ordinance being proposed covers all calls. It is this "broadening of the base" that could produce a revenue increase. The value of a one percent increase is approximately \$38,800. There is, however, no way to be sure that the revenue increase of adopting a modern ordinance will approach the 10% level. Based on Santa Barbara's specific situation, a more conservative position may be to assume a revenue increase from an updated ordinance of no more than 5%.

Based on this information, and with a goal of "revenue neutrality," the Finance Committee focused on a recommendation to lower the 6% rate. After evaluating potential rates at 5.75% and 5.50%, the Committee voted unanimously to recommend that Council adopt a 5.75% rate on the proposed model ordinance.

Public Opinion Research Survey: The City recently conducted a resident opinion survey to gauge voter perception and support for the UUT ballot measure under consideration for the November 4, 2008 election. With the potential loss of UUT revenues it was important to conduct the survey. We now have a better perspective on our community's understanding of this essential revenue source. It is clear that voter support increases when voters receive more information about the UUT and the fact that the funds are used for essential government services. These considerations have been incorporated into the recommended ballot statement.

The UUT Modernization Survey was conducted by Fairbank, Maslin, Maullin and Associates June 8-11, 2008. The survey canvassed 500 registered voters in the City of Santa Barbara. Attachment 3 is a summary of the results.

In summary, the survey revealed that:

- By informing Santa Barbara residents that the City's utility user's tax provides funding for essential City programs and services, such as police, firefighters and youth gang prevention programs, support for the measure increases significantly.
- Reducing the UUT tax rate marginally increases support for a Santa Barbara UUT ballot measure
- A reduction measure provides strategic advantages that are worth considering
- Survey response to UUT ballot measure components demonstrates that providing more information about the individual elements of the measure increases understanding and support
- Santa Barbara voters regard the state budget deficit and the impact of state funding cuts for local services to be top concerns
- Voters oppose cutting funding for public safety services and programs to serve vulnerable members of the community

Overall, the City of Santa Barbara has the feasibility to pass a UUT ballot measure. However, because UUT ballot measures are more complex than traditional finance measures, such as a sales tax or bond, it is crucial to educate residents as to why this measure needs to be approved by the voters.

Representatives from Fairbank, Maslin, Maullin and Associates will be at the City Council meeting on June 24, 2008 to brief the Council on the findings.

Next Steps

If Council desires to proceed with placing the revised Telecommunications UUT ordinance before the voters this November, final actions need to be completed at the Council's July 1st meeting in order to meet the County Elections deadlines for agendizing this request for consolidation with the November State and Federal Election. In order to return next week with the final actions and documents, staff is recommending that Council give staff final direction at today's meeting on the following three items:

1. The draft Telecommunications UUT Ordinance
2. The tax rate to be placed on the ballot
3. The proposed Election Resolution.

Staff has attached a draft of the necessary City Council election resolution (Attachment 2) which contains suggested language for the actual ballot statement to be submitted to the voters. Under Proposition 218, in order to place the proposed new UUT ordinance before the voters in November of this year, the Council's resolution must contain an emergency declaration and be adopted by a unanimous vote of the Council in order to allow the voters

to consider this ordinance at a non-regular (i.e., an even year election) City election. This resolution will be submitted to the Council for adoption in final form on July 1, 2008.

With Council's preliminary approval of these items and direction to proceed, staff proposes to return to the City Council on July 1, 2008 with recommendations to:

- Adopt Resolution Calling and Giving Notice of the Holding of a Special Municipal Election to Be Held on November 4, 2008, with the Presidential General Election to be held on that date Pursuant to Section 10403 of the Elections Code and declaring a Prop 218 Emergency and Requesting an Elections Code § 9212 report.
- Adopt Resolution Requesting the Board of Supervisors of the County of Santa Barbara to Consolidate a Special Municipal Election to Be Held on November 4, 2008, with the State and Presidential General Election to be held on that date Pursuant to Section 10403 of the Elections Code.
- Adopt Resolution Directing City Attorney to Prepare Impartial Analysis of the Measure to be placed on the ballot for the November 4, 2008 Special Municipal Election of the City of Santa Barbara.
- Determine if rebuttal arguments will be permitted and, if so, adopt Resolution Providing for the filing of rebuttal arguments for City measures submitted at Municipal Elections.

ATTACHMENTS:

1. Draft Telecommunications Utility Tax Ordinance dated June 24, 2008
2. Draft Election Resolution with draft ballot statement
3. Memo Dated June 18, 2008 from Fairbank, Maslin, Maullin & Associates on Results of Voter Opinion Research Survey
4. List of California City UUT Ballot Measures

SUBMITTED BY: Robert D. Peirson, Finance Director

APPROVED BY: City Administrator's Office

AN ORDINANCE OF THE CITY OF SANTA BARBARA ADDING CHAPTER 4.26 TO THE SANTA BARBARA MUNICIPAL CODE REGARDING A TELECOMMUNICATION AND VIDEO USERS TAX REDUCTION AND MODERNIZATION ORDINANCE.

THE PEOPLE OF THE CITY OF SANTA BARBARA DO ORDAIN AS FOLLOWS:

SECTION ONE: Title Four of the Santa Barbara Municipal Code is hereby amended to add a new chapter to the Municipal Code, Chapter 4.26 entitled "Telecommunications and Video Users' Tax Reduction and Modernization Ordinance") and it shall read as follows:

Section 4.26.010 Ordinance Title.

This Chapter shall be known as the Telecommunication and Video Users' Tax Reduction and Modernization Ordinance" of the city of Santa Barbara.

Section 4.26.020 Definitions.

The following words and phrases whenever used in this Chapter shall be construed as defined in this section.

A. ANCILLARY TELECOMMUNICATION SERVICES. Services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

1. Conference bridging service" which means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

2. Detailed telecommunications billing service" which means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

3. Directory assistance" which means an ancillary service of providing telephone number information, and/or address information.

4. Vertical service" which means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

5. Voice mail service" which means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

B. ANCILLARY VIDEO SERVICES. Services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video services.

C. BILLING ADDRESS. The mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

D. MOBILE TELECOMMUNICATIONS SERVICE. The meaning and usage as set forth in the

Mobile Telecommunications Sourcing Act 4 U.S.C. Section 124) and the regulations established therewith.

E. MONTH. A calendar month.

F. PAGING SERVICE. A telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

G. PERSON. Without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation including foreign, domestic, and non-profit), municipal district or municipal corporation other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

H. PLACE OF PRIMARY USE. The street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

I. POST-PAID TELECOMMUNICATION SERVICE. The telecommunication service obtained by making a payment on a telecommunication-by-telecommunication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

J. PREPAID TELECOMMUNICATION SERVICE. The right to access telecommunication services, which must be paid for in advance and which enables the origination of telecommunications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

K. PRIVATE TELECOMMUNICATION SERVICE. A telecommunication service that entitles the customer to exclusive or priority use of a telecommunications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A telecommunications channel is a physical or virtual path of telecommunications over which signals are transmitted between or among customer channel termination points i.e., the location where the customer either inputs or receives the telecommunications).

L. SERVICE ADDRESS. Any of the following:

1. The location of the service user's telecommunication or video equipment from which the telecommunication or video communication originates or terminates, regardless of where the telecommunication or video communication is billed or paid; or,

2. If the location in subsection 1) of this definition is unknown e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use.

3. For prepaid telecommunication service, service address" means the location associated with the service number.

M. SERVICE SUPPLIER. Any entity or person, including the City, that provides telecommunication or video service to a user of such service within the City.

N. SERVICE USER. A person required to pay a tax imposed under the provisions of this Chapter.

O. STATE. The state of California.

P. STREAMLINED SALES AND USE TAX AGREEMENT. The multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, and as it is amended from time to time.

Q. TAX ADMINISTRATOR. The Finance Director of the City or his or her designee.

R. TELECOMMUNICATIONS SERVICES. The transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with telecommunication services". Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; mobile telecommunication service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service or any other toll-free numbers designated by the Federal Communications Commission); 900 service or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

S. VIDEO PROGRAMMING. Those programming services commonly provided to subscribers by a video service supplier" including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

T. VIDEO SERVICES. Video programming and any and all services related to the providing, recording, delivering, use or enjoyment of video programming" including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a video service supplier", regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, telecommunication services", or interactive communication services that are functionally integrated with video services".

U. VIDEO SERVICE SUPPLIER. Any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telecommunications. A video service supplier" includes, but is not limited to, multi-channel video programming distributors as defined in 47 U.S.C.A. Section 522(13)]; open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multi-channel multipoint distribution services (MMDS); video services using internet protocol e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services or including two-way communications), whatever their technology.

V. VOIP VOICE OVER INTERNET PROTOCOL.) The digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

W. 800 SERVICE. A telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name 800", 855", 866", 877", and 888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

X. 900 SERVICE. An inbound toll telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. 900 service" does not include the charge for: collection services provided by the seller of the telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name 900" service, and any subsequent numbers designated by the Federal Communications Commission.

Section 4.26.030 Constitutional, statutory, and other exemptions.

A. Consistency with State and Federal Law. Nothing in this Chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the State.

B. Exemption Application. Any service user that is exempt from the tax imposed by this Chapter pursuant to subsection a) of this section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all telecommunication and video service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in telecommunication or video service suppliers so that the Tax Administrator can properly notify the new telecommunication or video service supplier of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of telecommunication or video users' taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance. The decision of the Tax Administrator regarding an application may be appealed pursuant to Section 4.26.170 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Administrator pursuant to Section 4.26.170 of this Chapter is a prerequisite to a suit thereon.

C. Establishment of Exempt Classes. The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Chapter and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

4.26.040 Telecommunication Users' Tax.

A. Establishment of Telecommunication Users' Tax. There is hereby imposed a tax upon every person in the City using telecommunication services. The maximum tax imposed by this section shall be at the rate of _____ percent (%) of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

B. Sourcing Rules. Mobile Telecommunications Service shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act 4 U.S.C. Section 124). The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation e.g., Streamline Sales and Use Tax Agreement).

C. Authority for Administrative Rulings. The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those telecommunication services, or charges therefor, that are subject to or not subject to the tax of subsection a) above.

D. Specific Inclusions in Telecommunication Services. As used in this section, the term telecommunication services" shall include, but are not limited to charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text and instant messaging.

E. Certain Exclusions From Telecommunications Services. As used in this section, the term telecommunication services" shall not include digital downloads that are not ancillary telecommunication services, such as music, ringtones, games, and similar digital products. Telecommunication services also does not include telecommunication services that are dedicated or used exclusively for internet access.

F. Multi-Jurisdictional Taxation. To prevent actual multi-jurisdictional taxation of telecommunication services subject to tax under this section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or local jurisdiction on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

G. Collection of Tax by Service Supplier. The tax on telecommunication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one 1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth 20th) day of the following month.

Section 4.26.050 Video Users Tax.

A. Establishment of Video Users' Tax. There is hereby imposed a tax upon every person in the City using video services. The maximum tax imposed by this section shall be at the rate of percent %) of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

B. Video Charges. As used in this section, the term charges" shall include but is not limited to, charges for the following:

1. regulatory fees and surcharges, franchise fees and access fees PEG);

2. initial installation of equipment necessary for provision and receipt of video services;
 3. late fees, collection fees, bad debt recoveries, and return check fees;
 4. activation fees, reactivation fees, and reconnection fees;
 5. video programming and video services:
 6. ancillary video services e.g., electronic program guide services, recording functions, search functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of video services;
 7. equipment leases e.g., remote, recording or search devices, converters, remote devices); and,
 8. service calls, service protection plans, name changes, changes of services, and special services.
- C. Charges Further Defined. As used in this section, the term charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.
- D. Administrative Rulings For Video Service Suppliers. The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this Chapter, an administrative ruling identifying those video services, or charges therefor, that are subject to or not subject to the tax of subsection a) above.
- E. Collection of Video Users' Tax. The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one 1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth 20th) day of the following month.

Section 4.26.060 Bundling Taxable Items with Non-Taxable Items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

Section 4.26.070 Substantial Nexus / Minimum Contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter, substantial nexus" and minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the telecommunication and video users' tax to the fullest extent permitted by state and

federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the City or distributed from a location with the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of services that are subject to a tax under this Chapter.

Section 4.26.080 Duty to Collect--Procedures.

A. Manner of Collection by Service Suppliers. The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Chapter shall be performed as follows:

1. The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 4.26.120 shall apply.

2. The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter. Where a service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

B. Filing Return and Payment. Each person required by this Chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

Section 4.26.090 Collection Penalties Service Suppliers.

A. Due Date for Taxes; Delinquencies. Taxes collected from a service user are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall

be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

B. Failure to Collect or Remit. If the person required to collect and/or remit the telecommunication or video users' tax fails to collect the tax by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen (15%) percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of and 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. Penalties for Fraud or Gross Negligence in Reporting or Remitting. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this Chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen (15%) percent of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

D. Penalties Dues As Tax. For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

E. Authority to Modify Due Dates. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users tax, or otherwise legally established, to create a central payment location or mechanism.

Section 4.26.100 Actions to Collect.

Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C).

Section 4.26.110 Deficiency Determination and Assessment Tax Application Errors.

A. Tax Deficiency Determinations. The Tax Administrator shall make a deficiency determination if he or she determines that any service user or service supplier required to pay or collect taxes pursuant to the provisions of this Chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 4.26.110 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. Notice of Deficiency. The Tax Administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person or entity allegedly owing the tax may request in writing to the Tax

Administrator for a hearing on the matter.

C. Hearing on Deficiency. If the person or entity allegedly owing the tax fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If such person or entity requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. Determination after Hearing. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person or entity owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 4.26.170 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 4.26.170 of this Chapter is a prerequisite to a suit thereon.

E. Delinquencies. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Chapter shall commence from the date of delinquency as provided in this subsection e).

F. Notice of Delinquency. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

Section 4.26.120 Administrative Remedy Non-Paying Service Users.

A. Administrative Remedies for the Obligation to Collect Tax. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Chapter from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 4.26.120 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. Delinquency Penalty. In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. Notice to Non-Paying Service User. The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

D. Additional Penalties. If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

Section 4.26.130 Additional Powers and Duties of the Tax Administrator.

A. Enforcement by Tax Administrator. The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter.

B. Administrative Regulations Regarding Payment. The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Section, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2). A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code section 53750 or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of Government Code section 53750 and the City does not waive or abrogate its ability to impose the telecommunication or video users tax in full as a result of promulgating administrative rulings or entering into agreements.

C. Administrative Agreements Regarding Billing Procedures. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Chapter and thereby: 1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter; or, 2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.

D. Compliance Audits. The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 4.26.110(d) of this Chapter for all taxes and applicable penalties and interest owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

E. Extension of Time. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of 75/100ths (0.75%) percent per month, prorated for any portion thereof.

F. Eligibility for Exemption. The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Chapter.

G. Waiver of Penalties and Interest. Notwithstanding any provision in this Chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

Section 4.26.140 Records.

A. Retention of Necessary Tax Records. It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

B. Administrative Subpoenas. The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

C. Non-Disclosure Agreements. The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7.

D. Use of Billing Agents. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

E. Access to Necessary Records. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of \$500 on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty

imposed under this Chapter.

Section 4.26.150 Refunds.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a person or service supplier, it may be refunded as provided in this section as follows:

A. **Written Claim for Refund.** The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a person or service supplier, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this subsection.

B. **Compliance with Claims Act.** The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946. The Tax Administrator, or the City Council where the claim is in excess of five thousand dollars (\$5,000), shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the time prescribed by Government Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.

C. **Refunds to Service Suppliers.** Notwithstanding the notice provisions of subsection a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, iii) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

D. **Overpayments as Credits.** Notwithstanding subsections a) through c) above, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a deficiency determination or assessment by the Tax Administrator in connection with an audit instituted by the Tax Administrator pursuant to Section 4.26.130(d). A service supplier shall not be entitled to said credit unless it clearly establishes the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.

Section 4.26.160 Low Income, Senior, Disabled Exemption/Refund.

Any individual who qualifies for an exemption under Santa Barbara Municipal Code section 4.24.080 shall be exempt from the tax imposed by this chapter and any such tax paid by any such individual is subject to refund under Section 4.26.150.

Service suppliers are not required to implement this exemption; the sole remedy shall be a refund of paid taxes by the taxpayer, as provided herein.

Section 4.26.170 Appeals.

A. Administrative Appeals. The provisions of this section apply to any decision other than a decision relating to a refund pursuant to Section 4.26.150 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision other than a decision relating to a refund pursuant to Section 4.26.150 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. See Government Code Section 935(b)]. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. Appeal to City Administrator. If any person is aggrieved by any decision other than a decision relating to a refund pursuant to Section 4.26.150 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Administrator by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

C. Scheduling of Administrative Appeal Hearing. The matter shall be scheduled for hearing before an independent hearing officer selected by the City Administrator, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

D. Notice of Decision. Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

E. Manner of Notice. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

Section 4.26.180 No Injunction/Writ of Mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

Section 4.26.190 Notice of changes to Ordinance.

If a tax under this Chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799.

Section 4.26.200 Effect of State and Federal Reference/Authorization.

unless specifically provided otherwise, any reference to a state or federal statute in this Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease as a result of excluding all or a part of a communication service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

Section 4.26.210 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.

The City shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

Section 4.26.220 Interaction with Prior Tax.

A. Satisfaction of Tax Obligation by Service Users. Any person who pays the tax levied pursuant to Sections 4.26.040 or 4.26.050 of this Chapter with respect to any charge for a telecommunication or video service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to Sections 4.24.020 and 4.24.070 of this Code with respect to that charge. Likewise, prior to April 1, 2009, any person who pays the tax levied pursuant to Sections 4.24.020 and 4.24.070 of this Code with respect to any charge for a service subject to taxation pursuant to this Chapter shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to Sections 4.26.040 or 4.26.050 of this Chapter with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the transition period from the prior telecommunication and video users' tax to the new telecommunication and video users' tax which transition period ends April 1, 2009) and to permit telecommunication and video service providers, during that transition period, to satisfy their collection obligations by collecting either tax.

B. Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this Chapter as soon as feasible after the effective date of the Chapter, but in no event later than permitted by Section 799 of the California Public Utilities Code.

C. Judicial Determinations. In the event that a final court order should determine that the election enacting this Chapter 4.26 is invalid for whatever reason, or that any tax imposed under this Chapter Section 4.26 is invalid in whole or in part, then the tax imposed under Sections 4.24.020 and 4.24.070 (unless repealed) shall automatically continue to apply with respect to any service for which the tax levied pursuant to this Chapter has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service or billing date) for which the tax imposed by this Chapter is not valid. However, in the event

of an invalidation, any tax other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this Chapter shall be deemed to satisfy the tax imposed under Section 4.24.020 and 4.24.070 on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

Section 4.26.230 Remedies Cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act Government Code Section 12650 et seq.) and the California Unfair Practices Act Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

SECTION TWO. Effective Date. This Chapter shall become effective immediately upon the date that this Ordinance is confirmed and approved by the voters of Santa Barbara at the statewide general election of November 2008.

SECTION THREE. Amendment or Repeal. Chapter 4.26 of Title Four of the Santa Barbara Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIIIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the city of Santa Barbara affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance.
3. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and
4. The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

SECTION FOUR. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declares that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

Swiley/ord/Telecommunication and Video Users spw 010 draft
June 19, 2008 4:01 pm

Attachment 1

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RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA CALLING AND GIVING NOTICE OF THE HOLDING OF A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY ON TUESDAY, NOVEMBER 4, 2008, FOR THE SUBMISSION OF A PROPOSED ORDINANCE TO THE VOTERS IN ORDER TO REDUCE AND MODERNIZE THE CITY'S EXISTING UTILITY USER'S TAX ORDINANCE SANTA BARBARA MUNICIPAL CODE CHAPTER 4.24) WITH RESPECT TO UTILITY TAXES ON TELECOMMUNICATION AND VIDEO SERVICES.

WHEREAS, pursuant to authority provided by state Elections Code section 9222 and Article XIII C, Section 2(b) of the California Constitution, the City Council of the City of Santa Barbara, hereby elects to submit the proposed City of Santa Barbara Telecommunications and Video Users Tax Reduction and Modernization Ordinance" as attached hereto and dated as of July 1, 2008) to the electorate of the City for possible approval pursuant to the requirements of the state Elections Code and Article XIII C of the state Constitution;

WHEREAS, the City Council is authorized by the state Elections Code to consolidate this special City election with the statewide Federal Election to be conducted on November 4, 2008 by the County of Santa Barbara and will be acting concurrently with the adoption of this resolution to effectuate such a consolidation;

WHEREAS, Article XIII C, Section 2(b) provides that, in order for the Santa Barbara City Council to consolidate this special City election with the November 4, 2008 statewide Federal Election being conducted by Santa Barbara County, the City Council must make an emergency declaration by a unanimous vote of the Council;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SANTA BARBARA AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the City Charter and the laws of the State of California, there is called and ordered to be held in the City of Santa Barbara, on Tuesday, November 4, 2008, a special municipal election for the purpose of submitting the proposed Telecommunication and Video Users Tax Reduction and Modernization Ordinance as attached hereto as Exhibit A) to the voters of the City for their due approval or rejection with a ballot statement as authorized by Elections Code section 13247) as follows:

CITY OF SANTA BARBARA

MEASURE

YES Shall Santa Barbara adopt an ordinance reducing the telecommunication utility users tax from 6% to 5.75%, to fund police, fire, 9-1-1, parks/recreation, gang prevention and after school programs for at-risk youth, senior services, street/pothole repairs, public transit, and other general fund services; exempting low-income seniors, prohibiting a tax rate increase without voter approval, equal treatment of taxpayers regardless of technology, annual audits, public review of expenditures and local control of all revenue?

NO

SECTION 2. As required by Article XIII C of the state Constitution, the City Council declares that there is an emergency need to hold and conduct this special City election as soon as the law allows and to consolidate it with the statewide Federal Election being conducted by the County of Santa Barbara on November 4, 2008.

SECTION 3. That the text of the ordinance submitted to the voters is attached as

Exhibit A, dated as July 1, 2008.

SECTION 4. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 5. That the City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 6. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until 8 o'clock p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

SECTION 7. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 8. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election in time, form and manner as required by law.

EXHIBIT A

FULL TEXT OF MEASURE
CITY OF SANTA BARBARA
TELECOMMUNICATION AND VIDEO USERS TAX
REDUCTION AND MODERNIZATION ORDINANCE

DRAFT DATED AS OF JULY 1, 2008

swiley/ord/uut/res uut call election
June 19, 2008 3:18 pm

TO: The City of Santa Barbara
FROM: Fairbank, Maslin, Maullin & Associates
RE: Summary of Survey Results
DATE: June 18, 2008

Fairbank, Maslin, Maullin & Associates (FMM&A) recently conducted a survey of City of Santa Barbara voters to assess support for a ballot measure to ratify and modernize the City's existing utility user's tax ordinance. The survey results show that by informing Santa Barbara voters that the City's utility user's tax, provides funding for essential City programs and services, such as police, firefighters and youth gang prevention programs, voter support for the measure increases significantly. As shown in Figure 1 below, initially a slight majority of voters support the measure. After providing voters with information about the measure, including the requirement of oversight provisions and that all funds will be used to fund vital City services, the yes vote increases dramatically. These results reflect trends FMM&A has found conducting UUT ballot measure research in communities throughout California. UUT measures are harder for voters to understand than other finance measures, and require educating and communicating with the public about the rationale, implications and need for passing the UUT ballot measure.

Figure 1: Support for Santa Barbara UUT Ballot Measure Status Quo)

Reducing the UUT tax rate marginally increases support for a Santa Barbara UUT ballot measure, however, it is still worth considering a ballot measure to reducing the tax rate. The survey results indicate that reducing the tax rate from six percent to either 5.75 percent or 5.5 percent, does not increase support beyond the survey's 4.4 percent margin of error. See Figure 2) In fact, even at half-point percent reduction, support still remains relatively soft, as only 27 percent of are definitely yes" voters indicating the need to communicate and educate voters about the UUT ballot measure. Nevertheless, a tax reduction may still be advisable as the survey results show that education of the public about the City of Santa Barbara UUT ballot measure is essential. Therefore, if the education program is limited, by time or resources, a tax rate reduction could yield the additional support needed to pass the measure and retain this important source of City revenue.

Figure 1: Support for City of Santa Barbara UUT Ballot Measure at Reduced Rates before Additional Information

A reduction measure provides several strategic advantages that are worth considering. First, the economy continues to struggle and voters will likely regard a measure reducing their tax rate more favorably than one that maintains the current rate. Further, the Santa Barbara UUT ballot measure will be one of a host of state and local finance measures appearing on the November ballot. Many voters may become more selective as to which finance measures that are willing to support. Therefore, a reduction measure would distinguish itself from other tax and bond measures also appearing on the ballot. Also, it has been FMM&A's experience that reduction measures do not generate organized opposition to the same degree that continuation measures create. Finally, a reduction measure may receive higher levels of support from voters who typically do not support finance measures, such as Republicans and voter over the age of 65.

Voter response to UUT ballot measure components demonstrates that providing more information about the individual elements of the measure increases understanding and support. The survey results show that voters highly regard the fiscal accountability and oversight provisions required by the measure and that the measure ensures all UUT revenue is used to fund City services.

Ensures public review of expenditures 88 percent support)
 Prevents the tax rate from being increased without voter approval 86 percent support)
 Exempts low-income seniors 81 percent support)
 Ensures local control of utility user's tax revenues 76 percent support)
 Closes loopholes to ensure equal treatment of all taxpayers regardless of technology used 71 percent support)

Santa Barbara voters regard the state budget deficit and the impact of state funding cuts for local services to be top concerns. Two-thirds 66 percent) consider the state budget deficit to be an extremely or very serious problem, and 55 percent view the effect of state budget cuts on local public services to also be a major problem. Therefore, when voters understand that passing the UUT ballot measure will protect local revenue for City of Santa Barbara services support for the measure increases substantially. In fact, 84 percent of voters respond that knowing the measure ensures that continuing revenues will be used to support essential city services, such as public safety, and street repairs, makes them more likely to support the UUT.

Voters oppose cutting funding for public safety services and programs to serve vulnerable members of the community. The survey results clearly show that Santa Barbara voters regard the services provided by the City to be very important, and they exhibit strong preferences for preventing funding cuts, especially to public safety services and programs that serve youth, seniors and other disadvantaged members of the community. Additionally, two-thirds 67 percent) rated gangs and juvenile violence to be an extremely or very serious problem in Santa Barbara. As such, four-in-five 73 percent) do not support cutting funding for gang prevention programs taught by police officers in Santa Barbara neighborhood schools. Santa Barbara voters identified the following as the least desirable to cut:

The number of firefighters 80 percent no cuts in funding)
 The number of police officers patrolling city streets 77 percent no cuts in funding)
 Funding for nonprofit groups that provide services to at-risk kids, battered women and the mentally ill 76 percent no cuts in funding)
 Funding for transit services for seniors and disabled residents 75 percent no cuts in funding)
 After-school programs for children and youth 70 percent no cuts in funding)

The number of 9-1-1 operators at the Santa Barbara emergency dispatch center 69 percent no cuts in funding)

Overall, the survey results show that the City of Santa Barbara has the feasibility to pass a UUT ballot measure. However, because UUT ballot measures are more complex than traditional finance measures, such as a sales tax or bond, it is crucial to educate voters as to why the City is asking voters to pass this measure. Voters need to understand the implications of losing the revenue currently provided by the UUT, and how it would affect the quality and availability of essential City services and programs. Additionally, it is important that voters understand that all revenue raised by the measure will be used to fund City of Santa Barbara services, the tax rate cannot be increased without voter approval, and that fiscal oversight requirements will ensure that tax dollars are spent efficiently and as promised.

FMM&A Survey Methodology From June 8-11, 2008 Fairbank, Maslin, Maullin & Associates FMM&A) conducted a poll of 500 City of Santa Barbara registered voters likely to vote in the November 2008 Presidential election. The margin of error for the full sample is +/- 4.4 percent; the margin of error for subgroups within the sample will be higher.

City of Santa Barbara Summary of Survey Results
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2425 Colorado Avenue, Suite 180 1999 Harrison Street Suite 1290
Santa Monica, CA 90404 Oakland, CA 94612
Phone: 310) 828-1183 Phone: 510) 451-9521
Fax: 310) 453-6562 Fax: 510) 451-0384

Fairbank,
Maslin,
Maullin &
Associates

Fairbank, Maslin, Maullin & Associates
Opinion Research & Public Policy Analysis

Utility User Tax Measures
Majority Voter Approval General Purpose)

November 2006

Agency Name Rate Yes% No% City of Compton From 10% to 8.5% 89.8% 10.2% Town of Portola Valley From 5.5% to 4.5% 86.3% 13.8% City of Daly City Same 5% 71.4% 28.6% City of Fowler Same 5% 65.9% 34.1% City of San Marino Same 5% 58.3% 41.7% City of Eureka Same 3% 51.6% 48.4%

November 2007

Agency Name Rate Yes% No% City of Emeryville no change 5.5%) 86.1% 13.9% City of Los Altos 3.5% to 3.2% 84.3% 15.7% City of Redwood City 5% to 4% 80.6% 19.4% City of Hermosa Beach 6% to 5.5% 72.0% 28.1% City of Benicia 4% to 3.5% 70.7% 29.3% City of Gilroy 5% to 4.5% 64.1% 35.9% City of Rialto no change 8%) 63.6% 36.4% City of Buenaventura 5% to 4.5% 63.5% 36.5% City of El Monte 7% to 6.5% 62.8% 37.2%

Utility User Tax Measures
Majority Voter Approval General Purpose)

February 2008

Agency Name Rate Yes% No% City of San Bernardino 7.83% to 7.75% 80.3% 19.7% City of Huntington Park 7% to 6.5% 78.8% 21.2% City of Richmond 10% to 9.5% 73.9% 26.1% City of Los Angeles 10% to 9% 65.6% 34.4% City of Arcata Same 3% 60.2% 39.8% City of Pasadena Same 8.3% 58.0% 42.0%

June 2008

Agency Name Rate Yes% No% City of Oakland Same 7.5% 79.1% 20.9% City of Winters 5% to 4.75% 70.0% 30.0% City of Covina Same 6% 65.1% 34.9% County of Alameda Same 6.5% 64.9% 35.2% City of Torrance Same 6% 55.8% 44.2% City of McFarland 15% all utilities new) 24.6% 75.5%

Attachment 4

